

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 2415 of 1986

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

GOVT. DRIVERS & TECHNICAL STAFF UNION THRO' PRESIDENT
VERSUS
STATE OF GUJARAT

Appearance:

MR DC RAVAL for the Petitioners
MR MUKESH PATEL for the Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 29/10/1999

C.A.V. JUDGMENT

1. The Government Drivers and Technical staff Union (Gujarat) through its President and Secretary, filed

this petition under Article 226 of the Constitution and prayed for direction to the respondents to pay to the members of the petitioner- association overtime allowance for any duty discharged beyond eight hours a day on the same footing as is paid to the drivers in other State Government departments, organisations and undertakings. Prayer has also been made for direction to the respondents to pay to the members of the petitioner-association, the arrears of overtime allowance from 16th November, 1978 from which date the overtime allowance was first paid to the drivers in the Port Administration. Interest on arrears amount has also been claimed. Further prayer has been made to treat Clause (3) of the order at annexure B on the record of this special civil application inasmuch as it denies the benefit of overtime allowances to the drivers represented by the petitioner-union as illegal, unconstitutional and of no effect whatsoever.

2. This claim of overtime is based on twofold grounds. Firstly, that in case an employee of the Government has to work beyond the normal working hours prescribed for a particular services, he is to be compensated for this extra work otherwise it will amount to Begar. Second ground of the claim is that in other departments of the Government, the drivers are being paid overtime where they work beyond their duty hours. So the second ground is a ground of discrimination.

3. These are the questions which are to be firstly decided by the respondent-State and only in case the Union is not satisfied by the decision of the Government there may be some semblance of justification by the Union to approach to this court. Annexure B is a document which is a communication in between the Government and the petitioner- Union and wherein it is decided that the demand of the petitioner- Union of overtime allowance cannot be accepted. From this document, I find that the petitioner- Union submitted a charter of demands to the Government and the decision taken thereon is communicated to the petitioner - Union vide this document. In additional affidavit filed on behalf of the State Government of Under Secretary to the Government of Gujarat, General Administration Department, Gandhinagar I find that the Government has come up with the defence that it is awaiting recommendations of the Fifth Central Pay Commission and it has resolved not to consider any proposal for reviewing any payscale, allowances, special pay etc.. It has further been stated that since such matters would be within purview of the Pay Commission and the Pay

Commission in its report would make such recommendations in these matters for the consideration of the Government. Reference has been made that the State Government has received numerous representations /demands from various categories of the Associations/Unions and Staff, which are kept pending till the announcement of the report of the Fifth Pay Commission by the Government of India. In para-3 of this affidavit, the deponent stated that subsequent to the receipt of the Central Pay Commissions's recommendations, the Government of Gujarat may refer demands that arise in matters of pay, allowances, emoluments, and anomalies arising thereof to an Expert Committee or Review/Fitment Committee to be appointed for such a purpose. Earlier also what is stated that such a procedure was followed by the Government of Gujarat while accepting the Fourth Central Pay Commissions's recommendations in the year 1987 with regard to various representations, claims that arose consequent to the Commission's recommendations. Concluding the affidavit, it is stated that the claim for overtime allowance of non-GTS drivers cannot be settled in isolation and will be referred to such an Expert Committee which will be competent to examine all such claims including, inter-alia, the maintainability of overtime allowance to both the categories of drivers keeping in view the revised pay scales for the category of drivers by the Central Pay Commission's recommendations. The Government will then consider whatever recommendations that may be made by such an Expert Committee or Review/Fitment Committee for such matters that are referred to it for its opinion. In the submission of the respondents, therefore, it would be premature for the Government to consider claims of overtime allowance from any categories of its staff, notwithstanding the fact that GTS drivers may at present be getting such overtime allowance.

4. From this affidavit of the respondents, it is clear that the demand of the petitioner - Union for overtime payment to its member drivers is not officially concluded and decided. This affidavit clarifies that whatever decision taken by the respondents and communicated to the petitioner vide annexure B is not the last word. These are the matters rightly submitted by the respondents to be taken care of by the Pay Commissions. This additional affidavit has been filed by the respondents at the stage where the recommendations of the Fifth Pay Commission were not brought into force but now these recommendations have been given effect to not only by the Central Government

but by the State Government w.e.f. 1-1-1996. It is really shocking that though these recommendations were given effect to long back neither of the parties to this petition has cared to produce on the record of this special civil application what ultimately the Pay Commission recommended for overtime payment to the drivers and what final decision has been taken in this respect by the respondents. Be that as it may. In the facts of this case this petition is wholly misconceived at this stage. The approach of the petitioner in this matter was totally ill-advised and misplaced. Under annexure B the demand of the petitioner- Union for overtime payment to its driver members was specifically denied and in such matters the approach by the Union to this court under Article 226 of the Constitution is wholly misconceived and ill-advised. The Union has a remedy in this matter by raising an industrial dispute but instead of raising the industrial dispute it has come under Article 226 of the Constitution which remedy could not have been availed of. Secondly that decision was taken by the respondents way back on 7th February, 1984 whereas this special civil application has been filed on 28th April, 1986. So it also suffers from delay and laches. Leaving apart this, now Fifth Pay Commission's recommendations have been brought into force and still if from these recommendations as accepted by the State Government, the petitioner -Union is not satisfied the matter could have been raised before the Pay Anomalies Committee constituted by the State of Gujarat under the Finance Department Resolution No. PGR-1098-34-M dated 20th May, 1998. This Committee is working and if we go by the additional affidavit of the State of Gujarat it is the only and adequate remedy available to the petitioner-Union also.

5. Taking into consideration the totality of the facts of this case, no relief as prayed for in this special civil application can be granted to the petitioner in view of the fact that the Pay Anomalies Committee has been constituted by the Government and it is functioning and this claim has to be raised by the petitioner before it if in Fifth Pay Commission's recommendation no such relief has been granted to them.

6. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs. However, the dismissal of this petition will not come in the way of the petitioner - Union to raise their claim, if this claim has not been satisfied by the recommendations of the

Fifth Pay Commission and as approved by the Government of Gujarat, by a representation before the Pay Anomalies Committee.

zgs/-